



# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### VALLEY REGIONAL OFFICE

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Secretary of Natural Resources

Robert G. Burnley  
Director

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Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION A SPECIAL ORDER BY CONSENT ISSUED TO:**

### **Mays Grocery, Inc.**

UST Facility ("Pinky's Place") located at 672 Longhollow Road

Buena Vista, Virginia

Facility Identification No. 6-013882

AND

UST Facility ("Mays' Country Store") located at 1036 Magnolia Avenue,

Buena Vista, Virginia

Facility Identification No. 6-036774

### **SECTION A: Purpose**

This is a Special Order by consent issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d) between the State Water Control Board and Mays Grocery, Inc. to resolve certain violations of the State Water Control Law and regulations at Mays Grocery, Inc.'s Underground Storage Tank Facilities located at 672 Longhollow Rd. (known as "Pinky's Place") and 1036 Magnolia Ave. (known as "Mays' Country Store") in Buena Vista, Virginia.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. “Board” means the State Water Control Board, a permanent citizen’s board of the Commonwealth of Virginia as described in Code §§ 10.1-1184 and 62.1-44.7.
2. “Code” means the Code of Virginia (1950), as amended.
3. “UST” means underground storage tank, as further defined in 9 VAC 25-580-10 and Virginia Code § 62.1-44.34:8.
4. “Mays Grocery, Inc.” means Mays Grocery, Inc., a Virginia corporation and the UST owner and operator within the meaning of Virginia Code § 62.1-44.34:8.
5. “Department” or “DEQ” means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Code § 10.1-1183.
6. “Director” means the Director of the Department of Environmental Quality.
7. “Pinky’s Place” (facility ID # 6-013882) means the retail UST fueling station and market owned and operated by Mays Grocery, Inc. and located at 672 Longhollow Road, Buena Vista, Virginia.
8. “Mays’ Country Store” (facility ID # 6-036774) means the retail UST fueling station and market owned and operated by Mays Grocery, Inc. and located at 1036 Magnolia Avenue, Buena Vista, Virginia.
9. “Order” means this document, also known as a Consent Special Order.
10. “Regional Office” or “VRO” means the Valley Regional Office of the Department.
11. “Regulation” means 9 VAC 25-580-10 *et seq.*, Underground Storage Tanks: Technical Standards and Corrective Action Requirements.

### **SECTION C: Findings of Fact and Conclusions of Law**

1. Mays Grocery, Inc. is primarily owned and operated by Mr. Sam Mays. Mays Grocery, Inc. owns and operates Pinky’s Place and Mays’ Country Store, both located in Buena Vista, Virginia, and are UST facilities within the meaning of Virginia Code § 62.1-44.34:8. Accordingly, Mays Grocery, Inc. owns and operates four USTs at Pinky’s Place and two USTs at Mays’ Country

Store.

2. Following an inspection of both facilities on November 13, 2000, Mays Grocery, Inc. was issued Warning Letters for Pinky's Place and Mays' Country Store respectively on December 7, 2000 for several apparent violations regarding 9 VAC 25-580-60, Upgrading of Existing UST Systems.
3. To resolve the outstanding issues in the Warning Letters, Mr. Mays, on behalf of Mays Grocery, Inc., entered into his first Letter of Agreement (LOA1) with DEQ on December 29, 2000, requiring Mays Grocery, Inc. to submit a copy of the contract for required upgrades or closures at both Pinky's Place and Mays' Country Store by January 22, 2001. Furthermore, Mr. Mays agreed to complete all necessary upgrades or closures of USTs at each facility and submit documentation that such work has been completed to DEQ in accordance with 9 VAC 25-580-70 and 9 VAC 25-580-330, by March 21, 2001.
4. Mays Grocery, Inc. was issued second Warning Letters for each facility on August 4, 2003 for failing to provide all of the documentation as set out in LOA1 and for remaining out of compliance with UST regulations.
5. To resolve the outstanding issues in the second Warning Letters, DEQ recommended that Mr. Mays enter into another LOA, considering Mr. Mays' continuing cooperation and good faith actions, the financial condition of each facility, and ability to comply with the law in a timely manner.
6. Accordingly, Mr. Mays, on behalf of Mays Grocery, Inc., entered into a second LOA (LOA2) with DEQ on October 7, 2003, wherein Mr. Mays agreed to submit the following documentation by December 31, 2003 for Pinky's Place:
  - a. an amended UST Form 7530-2 to reflect current operational status;
  - b. a closure assessment (UST form 7530-2) for UST No. 1 and UST No. 2 and the piping associated with UST No. 3, including copies of the building permit and tank disposal manifests;
  - c. a valid, passing, tank tightness test for UST No. 3;
  - d. current, valid cathodic protection test results for UST No. 3;
  - e. a copy of the 60-impressed current log; documentation that the new UST No. 4 is adequately protected from corrosion;
  - f. two consecutive months of passing release detection results for UST No. 3 and UST No. 4; and
  - g. financial assurance documentation.
7. In addition, Mr. Mays, on behalf of Mays Grocery, Inc. agreed to submit the following documentation by December 31, 2003 for Mays' Country Store:

- a. an amended Notification for UST Form 7530-2 to reflect the facility's operational status;
  - b. supporting documentation demonstrating that valid release detection is being performed on UST No. 1 and UST No. 2;
  - c. copies of release detection results demonstrating that a valid form of release detection is being performed on the piping associated with UST No. 1 and UST No. 2;
  - d. documentation that all metallic piping components associated with UST No. 1 and UST No. 2 are adequately protected from corrosion; and
  - e. financial assurance documentation.
8. Mr. Mays complied with most of the violations addressed in the LOA2 in a timely manner. However, Mays Grocery, Inc. was issued Notices of Violation (NOVs) on March 24, 2004 respecting both Pinky's Place and Mays' Country Store for failing to attain full compliance with the terms set out in LOA2.
9. The March 24, 2004 NOV for Pinky's Place cited violations for failing to provide cathodic protection results for UST No. 3 in violation of 9 VAC 25-580-90, documentation that the metallic components of each piping run are protected from corrosion in violation of 9 VAC 25-580-50, two consecutive months of passing release detection results, and financial assurance documentation. The March 24, 2004 NOV for Mays' Country Store cited violations for failing to provide documentation that the metallic piping components associated with UST No. 1 and UST No.2 are protected from corrosion, and documentation of financial assurance.
10. Mr. Mays has provided documentation that he has previously substantially complied with providing financial assurance for both Pinky's Place and Mays' Country Store by submitting a Letter of Credit to DEQ, which meets the requirements to demonstrate financial assurance pursuant to 9 VAC 25-590.
11. Mr. Mays submitted documentation to DEQ on June 28, 2004 that cathodic protection on the two USTs at Mays' Country Store was completed on May 13, 2004, but which was well beyond the December 31, 2003 extended compliance deadline set out in LOA2.
12. In an enforcement meeting with Mr. Mays on October 27, 2004, Mr. Mays provided DEQ with documentation that the metallic components of piping runs at the Pinky's Place facility were protected from corrosion prior to December 31, 2003. Subsequently, Mr. Mays provided DEQ with four consecutive months of passing release detection results from the Pinky's Place facility on November 19, 2004.
13. Both facilities returned to full compliance with all applicable state UST law and regulations on November 19, 2004. This Order assesses civil charges for failing to provide DEQ with assurance

of compliance records for both facilities, and for failing to install proper cathodic protection on the USTs located at Mays' Country Store, until well after the terms of LOA2 expired and the instant enforcement action was initiated.

14. Based on the same ownership of Pinky's Place and Mays' Country Store by Mays Grocery, Inc., and the similarity of the violations associated with each facility, the violations have been combined and addressed together in this Order. Both facilities are in compliance with state regulations and this Order only assesses civil charges for failure to comply in a timely manner.

#### **SECTION D: Agreement and Order**

Accordingly, the Board, by virtue of the authority granted it in Va. Code §§ 62.1-44.15 (8a) and (8d), orders Mays Grocery, Inc. and Mays Grocery, Inc. agrees that:

Mays Grocery, Inc. shall pay a civil charge of \$1,600.00, within 30 days of the effective date of the Order. The effective date of this Order shall be the date that it is signed by the Director of DEQ, after public notice and approval by the Board. Payment shall be by check, certified check, money order, or cashier's check payable to "Treasurer of the Commonwealth of Virginia" and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 10150  
Richmond, Virginia 23240

Mays Grocery, Inc. shall also include its Federal Identification Number with the civil charge payment and shall note on the payment that it is being made pursuant to this Order.

#### **SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of Mays Grocery, Inc., for good cause shown by Mays Grocery, Inc., or on its own motion after notice and opportunity to be heard.
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order.

Nothing herein shall affect appropriate enforcement actions by other federal, state, or local regulatory authority, whether or not arising out of the same or similar facts.

3. This Order is made by agreement and with the consent of the parties and does not constitute a finding, adjudication or admission of violation of any federal, state, or local law, rule, or regulation or any allegations contained herein. For the purpose of this Order only, Mays Grocery, Inc. admits the jurisdictional allegations in the Order.
4. Mays Grocery, Inc. consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Mays Grocery, Inc. declares it has received fair and due process under the Virginia Administrative Process Act, Code §§ 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by Mays Grocery, Inc. to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall act to waive or bar the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Mays Grocery, Inc. shall be responsible for failing to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. Mays Grocery, Inc. must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. Mays Grocery, Inc. shall notify the Director of the Regional Office in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:
  - a. The reasons for the delay or noncompliance;
  - b. The projected duration of such delay or noncompliance;

- c. The measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. The timetable by which such measures will be implemented and the date full compliance will be achieved.

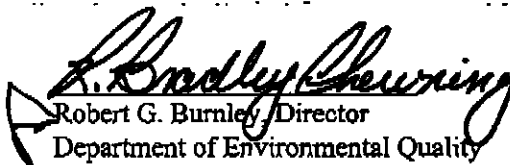
Failure to so notify the Director of the Regional Office in writing within 10 days of learning of any condition listed above, which Mays Grocery, Inc. intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim of inability to comply with a requirement of this Order.

- 9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
- 10. This Order shall become effective upon execution by both the Director or his designee and Mays Grocery, Inc. Notwithstanding the foregoing, Mays Grocery, Inc. agrees to be bound by any compliance date, which precedes the effective date of this Order.
- 11. This Order shall continue in effect until:
  - a. Mays Grocery, Inc. petitions the Director or his designee to terminate the Order after it has completed all requirements of the Order and the Director or his designee approves the termination of the Order; or. The Director's determination that Mays Grocery, Inc. has satisfied all the requirements of the Order is a case decision within the meaning of the Virginia Administrative Process Act; or
  - b. The Director or the Board may terminate this Order in his or its whole discretion upon 30 days' written notice to Mays Grocery, Inc.

Termination of this Order, or of any obligation imposed in this Order, shall not operate to relieve Mays Grocery, Inc. from his obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

- 12. By its signature below, Mays Grocery, Inc. voluntarily agrees to the issuance of this Order.

And it is so ORDERED this day of 13 July, 2005.

  
Robert G. Burnley, Director  
Department of Environmental Quality

The terms and conditions of the Order are voluntarily accepted by Mays Grocery, Inc.:

Date: 4/21/05 By: Sam L. Mays  
Title: President

Commonwealth of Virginia, City/County of Buena Vista

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of January, 2005 by  
Mays Grocery, Inc. who is President of Mays Grocery, Inc., on behalf of the  
Corporation.

4/30/2007  
Date my commission expires

  
Notary Public

